IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1192 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

and

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHUPENDRASING NARSING

Versus

STATE OFGUJ

Appearance:

MS BANNA S DUTTA for Appellant

MR MA BUKHARI APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

and

MR.JUSTICE A.L.DAVE

Date of decision: 06/12/2000

ORAL JUDGEMENT (Per : MISS JUSTICE R.M.DOSHIT)

This appeal arises of the judgment and order dated 2nd December, 1992, passed by the learned Additional Sessions Judge, Bhavnagar, in Sessions Case No. 14/92. The appellant before this court is the accused Bhupendrasing Narsing. The accused has been

convicted for the offence punishable under section 302 IPC, and has been sentenced with life imprisonment and the fine of Rs.1000/-. In case of default in payment of fine, a sentence of SI for two years has been passed. The appellant has also been found guilty of violation of the Notification issued by the District Magistrate, Bhavnagar, under section 135 of the Bombay Police Act, however, no separate punishment has been imposed for the said offence.

It was the case of the prosecution that the accused Bhupendrasing was the resident of Bhavnagar. On 16th July, 1991, at around 10-00 O'clock, near Valand Wadi of Jamna Kund area of Bhavnagar town, the accused stabbed his sister-in-law Manjulaben in her stomach. The said Manjulaben was immediately removed to the Hospital, however, she succumbed to the injuries sustained by her. The accused was, therefore, charged for the offence punishable under section 302 IPC and for violation of the Notification issued by the District Magistrate under section 135 of the Bombay Police Act.

The prosecution has relied upon the evidence of one Amarsing Narsing, the older brother of the accused Bhupendrasing. The said witness Amarsing (PW-4) has deposed that he, Bhavsing, the late husband of the deceased Manjulaben, and Bhupendrasing the accused were the real brothers, the deponent was a bachelor, late Bhavsing had died some 2o-22 years ago, and since then his widow Manjulaben and daughter Arunaben were residing with the deponent, the accused Bhupendrasing was the youngest brother, however, he was ill-tempered and used to ill-treat his wife and to beat her. His wife, therefore, had left him and she and her children were residing with her parents in village Navagam, Bhupendrasing did not have a stable life and used to work in the diamond factory some time in Bhavnagar and some time in Surat. On the day previous to the day of the incidence, he had visited the house of Amarsing Narsing and had quarreled with Amarsing as well as Manjulaben. Amarsing had asked him to leave the house and not to return. He had also advised Manjulaben to be careful of Bhupendrasing since he was ill-tempered, and had a criminal history. On the day of the incidence, the deceased Manjulaben had gone to the market for buying vegetables and when she was returning, she was stabbed by Bhupendrasing. The house of Amarsing was some 150 to 200 ft. away from the place of the incidence, and having heard the shouts, he ran towards the place of incidence. He saw Bhupendrasing stabbing Manjulaben and Manjulaben had fallen down. When he reached the place of the

incidence, one Rameshbhai and one Khatki (butcher) had already arrived at the place of the incidence and Bhupendrasing ran away with the knife. The deceased Manjulaben inspite of her wounds was conscious and was carried to the Hospital. The Medical Officer Dr. Girishbhai Vrujlal (PW-1) had examined her and had found three incised wounds on her stomach. She had told the said doctor that she was stabbed by Bhupendrasing which is recorded in the case history (EX-8) of the deceased Manjulaben. The blood group of the deceased Manjulaben was 'A+ve'. The accused Bhupendrasing was also brought before the said doctor on 17th July, 1991. He had collected the blood of the accused Bhupendrasing and was found to be of the group 'O+ve'. He has also stated that inspite of the loss of blood and severe pain, Manjulaben was conscious and had given the case history to the said doctor. He has denied the suggestion that the case history was dictated either by Muktaben or the witness Amarsing. The Executive Magistrate Shri Shashikantbhai Pathak (PW-3) was summoned on the same day at around 11-25 in the forenoon to record the Dying Declaration of the deceased Manjulaben. The said witness has recorded the Dying Declaration (EX-14). The doctor had accompanied him to the patient and had certified that the patient was conscious and was in the sound state of mind to give the Dying Declaration. At the time when he was recording the Dying Declaration, no other person was present. In the Dying Declaration (EX-14), the deceased Manjulaben has stated that she was stabbed by Bhupendrasing with a knife. The Investigating Officer Ramjibhai Nathalal Bharda, Police Inspector, Bhavnagar 'C' Division (PW-11) has admitted that the complaint lodged by the witness Amarsing (PW-4) was recorded by him. He has proved the collection of the muddamal viz. soil collected from the scene of offence and the arrest of the accused with the muddamal knife. He had recorded the statement of the deceased Manjulaben in the Hospital and had prepared the inquest panchnama and she died at around 2-30 in the afternoon. The eye witness Rameshbhai Kalubhai (PW-5) has also supported the prosecution case. The Medical Officer Dr. Milanbhai Shah (PW-2) had performed the autopsy on the body of the deceased Manjulaben. He has certified that there were five sutured injuries on her stomach, and the internal injuries in the stomach and the liver were corresponding with the external injuries nos. 5 and 3. The small intenstine had received several injuries and a tear was found on the liver also. He has opined that the death occurred due to " shock, due to extensive blood loss and injury to vital organs."

The evidence of the eye witnesses Amarsing Narsing and Rameshbhai Kalubhai is natural. Rameshbhai had a shop near the place of incidence and the house of Amarsing was not far away from the place of incidence. We, therefore, find that the testimony of both the aforesaid eye witnesses is reliable and trust worthy. Even the deceased Manjulaben had immediately after the incidence before the doctor who first examined her and before the Executive Magistrate stated that it was Bhupendrasinh who stabbed her with knife. With this consistent evidence, there can be no other conclusion but of the guilt of the accused Bhupendrasinh Narsing. We are, therefore, of the view that the learned trial Judge has rightly recorded the conviction of the accused under section 302 IPC. We, therefore, confirm the impugned judgment and order recording conviction and the sentence passed upon the accused-appellant by the learned trial Judge.

Appeal is dismissed.

(MS R.M.DOSHIT J)

(A.L.DAVE J)

JOSHI